

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIAN EDWARD GRIFFIN,

Plaintiff

V.

MELVIN S. LOCKETT,
et al.,

Defendants

.....

No. 1:CV-06-2445

JUDGE SYLVIA H. RAMBO

ORDER

The background of this order is as follows. On June 18, 2008, Plaintiff moved for relief from an order under Federal Rule of Civil Procedure 60(b). (Doc. 93.) The order from which he seeks relief is the one entered on December 10, 2007, denying Plaintiff leave to amend his complaint. (Doc. 66.) Leave to amend was denied because of Plaintiff's repeated failure to properly amend his complaint. (*See* Docs. 55-66.)

Plaintiff’s motion must be denied because the subject order is not an order to which Rule 60(b) applies. The Rule is an avenue for relief from a “*final* judgment, order, or proceeding.” Fed. R. Civ. P. 60(b) (emphasis added). The Advisory Committee notes to the Rule specify that

the qualifying word ‘final’ emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) affords relief; and hence interlocutory judgments are not brought within the restrictions of the rule, but rather they are left subject to the complete power of the court rendering them to afford such relief from them as justice requires.

Accord Penn W. Assocs., Inc. v. Cohen, 371 F.3d 118, 124-25 (3d Cir. 2004). A final judgment or order is “one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment;” conversely, an order is not final “if claims remain unresolved and their resolution is to occur in the district

court.” *Id.* at 125 (quotations omitted). The order upon which Plaintiff bases his 60(b) motion is not a final order because claims in this case remain unresolved. They must be addressed in this court in the first instance. Accordingly, Plaintiff’s motion is **DENIED**.

s/Sylvia H. Rambo

SYLVIA H. RAMBO
United States District Judge

Dated: June 30, 2008.